

Assembly Joint Resolution No. 9

RESOLUTION CHAPTER 123

Assembly Joint Resolution No. 9—Relative to patents.

[Filed with Secretary of State July 21, 2015.]

LEGISLATIVE COUNSEL’S DIGEST

AJR 9, Chang. Patent reform.

This measure would urge the President and the Congress of the United States to craft a balanced and workable approach to reduce incentives for and minimize unnecessary patent litigation while ensuring that legitimate patent enforcement rights are protected and maintained.

WHEREAS, The principle of intellectual property is enshrined in the United States Constitution, specifically under clause 8 of Section 8 of Article I of the United States Constitution, which empowers Congress to “promote the Progress of Science and useful Arts, by securing for limited Times to Authors and Inventors the exclusive Right to their respective Writings and Discoveries”; and

WHEREAS, A robust patent system is critical to promote economic growth and innovation and ensure just compensation for the labor and proliferation of beneficial ideas and innovations; and

WHEREAS, California accounts for 25 percent of the nation’s patents; and

WHEREAS, The state recognizes and respects the importance of patent protections and patent enforcement rights to driving continued research, investment, technological innovation, and job creation across multiple sectors of our economy; and

WHEREAS, Small businesses depend on patents to secure investments, and firms with fewer than 25 employees hold nearly one-quarter of United States-held patents in innovative emerging technologies; and

WHEREAS, Enforcement of legitimate patent rights is essential to promoting an innovation environment that fuels economic growth; and

WHEREAS, There is increasing concern about litigation by predatory Patent Assertion Entities (PAEs), which are built on a rent-seeking business model that exploits the patent legal system for financial gain without producing or manufacturing anything of value for society; and

WHEREAS, Many PAEs attain ambiguous patents with the sole intent of filing patent infringement lawsuits. PAEs assert these patents against businesses of all sizes and in all industries, often years after the product has become standard and widely used; and

WHEREAS, PAEs rarely earn successful judgments in court, underscoring the questionable merits of these particular patent cases. However, given the

high cost and risks associated with patent litigation, most defendants choose to settle in order to avoid further financial loss. Indeed, many PAEs will offer royalty settlements below market value in order to encourage settlement and avoid trial; and

WHEREAS, Predatory PAEs have a detrimental impact on the economy and innovation. PAE activities cost businesses \$29 billion directly, mostly borne by small- and medium-sized businesses; and

WHEREAS, The growth of patent litigation is directly tied to aggressive PAEs in recent years. In 2010, PAEs were responsible for 29 percent of patent litigation, and by 2012 PAEs represented 62 percent of all patent suits; and

WHEREAS, The California economy is especially vulnerable to lawsuits directed at information technology patents; and

WHEREAS, Federal legislation is necessary to prevent and deter abusive patent litigation; now, therefore, be it

Resolved by the Assembly and the Senate of the State of California, jointly, That the Legislature urges the President and the Congress of the United States to craft a balanced and workable approach to reduce incentives for and minimize unnecessary patent litigation while ensuring that legitimate patent enforcement rights are protected and maintained; and be it further

Resolved, That the Chief Clerk of the Assembly transmit copies of this resolution to the President and Vice President of the United States, the Speaker and Minority Leader of the House of Representatives, the Majority Leader and Minority Leader of the Senate, and each member of the California delegation to the United States Congress.